

The State of South Carolina



Office of the Attorney General

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June 19, 1987

The Honorable Paul E. Short, Jr.
Member, House of Representatives
126 Main Street
Chester, South Carolina 29706

Dear Representative Short:

In a letter to this Office you questioned whether a pawnbroker could have a customer waive the ninety-day requirement for holding property pawned which is set forth in Section 40-39-110. Such provision states:

(i) if any loan remains unpaid for a period of ninety days from the due date or any renewal or extension thereof, the title of the borrower or pledgor to the property pledged to secure the loan shall vest in the pawnbroker, without advertising, sale or accountability to the pledgor; provided, that the pawn ticket or memorandum delivered to the borrower in accordance with § 40-39-80, contains on the back thereof a notice to that effect, and provided further, that a printed or written notice of the impending forfeiture be mailed to the pledgor at the address given on the pawn ticket, at least ten days prior to the forfeiture date. Such notice shall contain a description of the article pledged, and the amount due thereon as of the date of the notice.

Generally, it is held that the business of pawnbrokers is clearly within the police power of the state to regulate. Moreover, it has particularly been stated that

... the business of pawnbrokers is one which belongs to a class where the strictest police regulation may be imposed. The liberty

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of contract is, as to pawnbrokers, subservient to the public welfare ... (T)he rules, guides and directives established by the legislature to regulate the business of making small loans are expressions of public policy, and the parties to a small loan contract cannot set at naught the public policy of the state by their agreement to contractual provisions which are in derogation of the statute.

54 Am.Jur.2d, Moneylenders and Pawnbrokers, Sections 3 and 25, pp. 597 and 636. Also, the ninety-day requirement for keeping property pledged to secure a loan must be read in association with other provisions requiring the keeping of records with descriptions of articles pawned or pledged which are required to be available for inspection by law enforcement officers at all times. See: Sections 40-39-70 and 40-39-90 of the Code. It has been stated that such record-keeping requirements are valid exercises of the police power on the theory that such provisions directly relate to the prevention of crime and the apprehension of criminals. Ibid, Section 5, p. 600.

Referencing the above, this Office is unable to conclude that a customer could waive the ninety-day requirement for holding property pawned as set forth in Section 40-39-110. Pursuant to Section 40-39-130 of the Code, monetary penalties and the suspension of a pawnbroker's license may be imposed upon individuals violating any of the provisions regulating pawnbrokers.

If there is anything further, please advise.

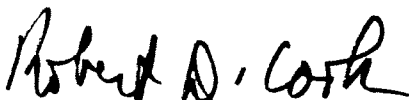
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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